

Doc # 5412
ADOPTED 7/18/91

RESOLUTIONS OF THE BOSTON REDEVELOPMENT AUTHORITY
REGARDING AMENDMENTS TO THE COMMONWEALTH CENTER
DEVELOPMENT PLAN AND DEVELOPMENT IMPACT PROJECT PLAN
AND RELATED DOCUMENTS

VOTED: The BRA finds and concludes that the Project continues to be important to the revitalization of the Midtown Cultural District area; that the urban design elements of the Project as modified reflect the needs of the Midtown Cultural District, while respecting the public goals and guidelines established for downtown development in Boston; that the Project will form an important link in the City's skyline between the Financial District and the Back Bay; that the Project will aid the City financially by generating jobs, and by providing Boston with a new source of real estate tax revenues and linkage funds; and that the Project will make an important contribution to Boston's affordable housing and cultural needs.

The BRA further finds and concludes that the Development Plan as outlined in the Authority's memorandum with respect to the Paramount Theater, underground parking, interim surface parking and miscellaneous matters is consistent with the Project's previously approved Development Plan.

THEREFORE, be it resolved that:

The Authority hereby approves the proposed forms of Amendment to Development Impact Project Agreement, Amendment to Land Disposition Agreement, revised form of Cultural Facilities Agreement, Revised Adequacy Determinations and Certificates of Consistency in substantially the forms attached hereto, and authorizes the Director of the Authority to execute and deliver in the name of and on behalf of the Authority the foregoing agreements, with such changes as the Director and the Chief General Counsel, in their discretion, shall determine to be necessary or desirable, the Director's execution and delivery of any of the foregoing or the taking of any such action to be conclusive evidence of such determination and of the authority granted to them hereunder; and that the Director be authorized to issue such certificates, further amendments and agreements, including a conforming Amendment to Cooperation Agreement as the Director with the concurrence of the General Counsel finds necessary or convenient for the implementation of the Project.

FIRST MODIFICATION OF
DEVELOPMENT IMPACT PROJECT AGREEMENT, DEVELOPMENT
PLAN AND DEVELOPMENT IMPACT PROJECT PLAN FOR PLANNED
DEVELOPMENT AREA NO. 33 COMMONWEALTH CENTER

This is the first modification to the the Development Impact Project Agreement, the Development Plan and Development Impact Project Plan for Planned Development Area No. 33, Commonwealth Center, dated June 15, 1989, approved by the Boston Redevelopment Authority on June 29, 1989, approved by the Boston Zoning Commission on July 27, 1989, and effective on August 17, 1989 (the "PDA/DIP Plan").

Recitals

Under the PDA/DIP Plan, Commonwealth Center Limited Partnership, a Delaware limited partnership, the general partners of which are F.D. Rich Company of Boston, Inc., a Connecticut corporation, and Casa Development, Inc., a Massachusetts corporation which is a wholly-owned subsidiary of A.W. Perry, Inc. (the "Developer") was the developer for the Commonwealth Center Project (the "Project") to be developed on various parcels of land (the "Site") more particularly described in the PDA/DIP Plan.

Citicorp Real Estate, Inc., a Delaware corporation ("CRE") made a mortgage loan to the Developer to finance a portion of the acquisition and development cost of the Project, which loan is secured by a Mortgage and Security Agreement on the Site, dated September 20, 1988, and recorded in the Suffolk County Registry of Deeds, in Book _____, Page _____, and is further evidenced and secured by a Loan Agreement, a Collateral Assignment of and Security Agreement with respect to Contracts, Licenses, Permits and Agreements, and by further instruments mentioned in said Loan Agreement, all as amended to date (collectively, the "Loan Documents").

Events of default have occurred under the Loan Documents, and CRE has commenced proceedings to foreclose its mortgage on the Project Site and has elected to exercise certain rights and powers of the Developer, pursuant to the terms of the Loan Documents.

Changed economic conditions, including the Developer's defaults under the Loan Documents, necessitate an interim use of the Project Site and modifications to the manner in which the restoration of the Paramount Theater will proceed.

Therefore, the following modifications are made to the PDA/DIP Plan:

1. General Description of Proposed Development and Use Allocation: The restoration of the Paramount Theater will be undertaken by an entity to be designated by the City of Boston

and the Boston Redevelopment Authority, pursuant to the terms of a certain lease of the Paramount Theater as Lessee, (the "Paramount Lease") and the Cultural Facilities Agreement, as amended, and other agreements related thereto. Further, the Evans House, which is in a seriously deteriorated and blighted condition, will be demolished.

The Site, with the exception of the Paramount Theater, will be used as temporary parking facilities. This use of the Site as temporary parking facilities will be an interim use before the full Project is built. Given that the demolition and new construction on the Site will not all be performed at the same time, the temporary parking use may involve the use and re-use of different portions of the Site from time to time. As the existing structures are removed, various portions, or all, of such vacant land will be used for temporary parking facilities. These temporary parking facilities will provide a total not in excess of approximately 563 parking spaces.

2. Legal Information: The entire Site is owned by Commonwealth Center Limited Partnership subject to the rights of CRE under the Loan Documents.

3. Parking and Loading Facilities: The 341 parking spaces currently existing on the Site will be replaced with temporary parking facilities not in excess of approximately 563 spaces. A number of the temporary spaces will be available for use by the general public, including theater district patrons and residents of Chinatown during the evening and weekend hours.

4. Permits: A Project Change Notice, dated December 27, 1990, was filed with EOEa.

The construction of the interim parking facilities on the Site requires several permits and approvals. The Boston Air Pollution Control Commission will be requested (i) to confirm an exemption for the proposed temporary parking facilities, (ii) to permit the continued use of the 341 public parking spaces on the Site pursuant to its Procedures and Criteria for the issuance of parking freeze permits, and (iii) to permit the use of the temporary parking facilities during off-peak hours for patrons of cultural district activities not located on the Site and for residents of Chinatown. A Conditional Use Permit is also required from the Boston Board of Appeal for the temporary parking facility because the Site is located in a Restricted Parking District and because the use is a conditional use under the applicable provisions of the Boston Zoning Code. An approval for curb cuts is also required from the Boston Department of Public Works.

5. Proposed Uses: The proposed uses of the Site will also include the interim use as temporary use as parking facilities.

The temporary parking facilities will consist solely of surface parking.

6. Public Benefits:

A. CULTURAL FACILITIES

The Project will include the performance facilities to be located within the Paramount Theater, pursuant to the Paramount Theater Lease and the Cultural Facilities Agreement.

E. TRAFFIC AND TRANSPORTATION

In addition, the Project will include the temporary parking facilities for approximately 563 vehicles specifically intended for evening and weekend use for residents of Chinatown and by patrons of the retail and cultural activities of the Midtown Cultural District.

H. HISTORIC PRESERVATION

The Paramount Theater will be restored pursuant to the Paramount Theater Lease and the Cultural Facilities Agreement. The Project will not include the renovation of the Evans House on Tremont Street.

7. Effect of Modifications:

The provisions of the PDA/DIP Plan remain in effect, with the exception of those provisions that have been specifically modified by this First Modification. In the event of a conflict between the provisions of the PDA/DIP Plan and those of this Modification, those of this Modification shall prevail and govern.

Pursuant to Section 38-14.6 of the Boston Zoning Code, the Boston Redevelopment Authority has certified to the Commissioner

of Inspectional Services that the modifications set forth herein are consistent with the PDA/DIP Plan.

Executed under seal this ____ day of _____, 1991.

Witness:

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Stephen Coyle, Director

CITICORP REAL ESTATE, INC.

Approved as to form:

By: _____

Robert F. McNeil
Chief General Counsel
Boston Redevelopment Authority

By: _____

ssc/6390/124/ac2

CULTURAL FACILITIES AGREEMENT
FOR COMMONWEALTH CENTER DEVELOPMENT

This Agreement is made between Citicorp Real Estate, Inc. ("CREI") and [NEW ENTITY] ("New Entity") designated by Boston Redevelopment Authority ("BRA") and City of Boston Commissioner of Arts and Humanities ("OAH").

Recitals

Whereas, Commonwealth Center Limited Partnership ("CCLP") was proponent of Commonwealth Center Project ("Project");

Whereas, CCLP purchased Paramount Theatre from Public Facilities Department ("PFD") subject to obligation to restore as set forth in deed ("PFD Deed");

Whereas, CCLP negotiated a plan for restoration of Paramount and long term lease of restored Paramount to an entity to be designated by the City; and final understandings on for the Paramount were set forth in Cultural Facilities Agreement ("Old Agreement") that was never executed;

Whereas, CCLP obtained zoning and other approvals for Project based upon restoration and leasing of Paramount as provided in PFD Deed and Old Agreement;

Whereas, CCLP financed acquisition of Project site, including Paramount, with mortgage loan from CREI;

Whereas, CCLP did not restore Paramount as provided in PFD Deed;

Whereas, CCLP defaulted on mortgage loan from CREI;

Whereas, CREI has commenced foreclosure on Project;

Whereas, in light of current economic situation for Boston real estate, parties do not foresee restoration of Paramount pursuant to the plan set forth in the PFD Deed and Old Agreement;

Whereas, the parties desire to arrange for the restoration and use of the Paramount in the near future;

Whereas, CREI desires to modify permits and approvals for Project to remove economic impediments for future developer; and

Whereas, the parties desire to formulate practical plan for dealing with Paramount and avoiding uncertainties of waiting for future development of Project;

Now, therefore, for valuable consideration received, the parties agree as follows:

1. Lease. Upon satisfaction of the conditions set forth below, CREI will lease the Paramount to public entity designated by the BRA and OAH (the "New Entity") for a term of 99 years, at nominal rent, and upon the further terms and conditions set forth in the draft lease (the "Lease") attached to this Agreement as Exhibit A.

2. Conditions to be satisfied. The obligation of CREI to execute and deliver the Lease is conditioned entirely upon satisfaction of the following:

- (a) Amendment of the PFD Deed in accordance with this Agreement;
- (b) Amendment of the all zoning permits, approvals and agreements (the "Zoning Approvals") to provide that execution and delivery of the Lease satisfies conclusively all obligations of the developer of the Project as heretofore proposed with respect to cultural facilities and the Paramount Theater, and that the developer may proceed at any time with the Project and without further obligation to restore, construct, own, operate, contribute any cultural facility as part of the Project or as a condition of the Zoning Approvals;
- (c) Amendment of any other permits, approvals and agreements of local, state or federal governments and agencies (the "Government Approvals") to provide that execution and delivery of the Lease satisfies all obligations of the developer of the Project as heretofore proposed with respect to cultural facilities and the Paramount Theater, and that the developer may proceed at any time with the Project and without further obligation to restore, construct, own, operate, contribute any cultural facility as part of the Project or as a condition of the Government Approvals;
- (d) Receipt of all approvals needed to use the Project Site for surface parking as an interim use until construction commences on buildings or other improvements;
- (e) CREI acquiring title to the Paramount through foreclosure or otherwise;

- (f) Agreement that all cultural facilities obligations of future developer of Project under the Zoning Approvals and Government Approvals are satisfied by Lease.

3. Certain Expenses of OAH. In order to defray certain expenses to be incurred by OAH in administering the lease and continuing activities to renovate the Paramount Theater, CREI will pay a total of \$200,000 to OAH in five installments of \$40,000 each; the first installment of \$40,000 shall be paid simultaneously with the execution of the Lease and the four remaining installments shall be paid on the anniversary of the Lease. Payment shall be made to the BRA as fiscal agent for OAH.

4. Parties Bound. This agreement shall inure to the benefit of the parties hereto and their respective successors and assigns. Without limiting the foregoing, CREI may assign this agreement to any subsequent owner of the Project Site and the City may designate any party to be the Tenant under the Lease.

5. Termination. If the conditions stated above are not fulfilled by [June 1, 1991], then either party upon 60 days notice to the other may terminate this agreement.

6. Cooperation. The Parties agree to cooperate in all actions and proceedings necessary to fulfill the conditions set forth in Section 2. Such cooperation shall include public and private support at all hearings and before all government agencies having jurisdiction over the Project. Such cooperation shall also include consultation on all matters of substance arising out of this Agreement and the Lease.

7. Notices. All notices or other communications required or permitted to be given under this Agreement shall be in writing, signed by a duly authorized officer or representative of the CREI or New Entity as the case may be, and shall either be hand-delivered, delivered by recognized overnight delivery service to the principal office of the party to whom it is directed as noted below or mailed postage pre-paid, by certified mail, return receipt requested to such office as set forth below and shall be deemed given when delivered or on the date shown on the receipt of the delivery service that such delivery was refused during normal business hours:

Citicorp Real Estate, Inc
599 Lexington Avenue, 21st Floor, Zone 12
New York, New York 10043
Attention: James M. Bullock,
Senior Vice President

with a copy to:

John Achatz, Esquire
Brown Rudnick Freed & Gesmer
1 Financial Center
Boston, Massachusetts 02111

Boston _____

Attention: _____

The parties shall promptly notify each other of any change of their respective addresses set forth above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed under seal in their behalf by their respective officers thereunto duly authorized as of this ____ day of March, 1991.

CITICORP REAL ESTATE, INC.

By: _____

NEW ENTITY

By: _____

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Stephen Coyle, Director

CITY OF BOSTON
OFFICE OF ARTS AND HUMANITIES

By: _____

EXHIBIT: LEASE

Achatzj:Citicom:ANO

AMENDMENT TO LAND DISPOSITION AGREEMENT

This Amendment to Land Disposition Agreement (the "Amendment") is made as of this _____ day of _____, 1991 between _____, a _____, having an address at _____ (the "Redeveloper") and the **BOSTON REDEVELOPMENT AUTHORITY**, a public body politic and corporate organized under Chapter 121B of the Massachusetts General Laws, as amended, and existing pursuant to the provision of Chapter 652 of the Acts of 1960, and having a principal place of business at One City Hall Square, Boston, Massachusetts 02201 (the "Authority").

PRELIMINARY STATEMENT

On September 29, 1989, the Authority and Commonwealth Center Limited Partnership, a Delaware Limited Partnership, entered into a Land Disposition Agreement, which was recorded with the Suffolk County Registry of Deeds (the "Registry") in Book _____, Page _____ (the "Land Disposition Agreement") for the construction of a mixed-use development containing hotel, retail, day care, parking and office space, on the "Property" (as such term is defined in the Land Disposition Agreement). The Property is known as Parcel 30 and is generally bounded by Boylston Street, Washington Street, Avery Street and Tremont Street. The Property contains several parcels, among which is the "Authority Parcel," known and numbered as 17-23 Boylston Street in Boston Proper, Boston, Massachusetts, and more particularly described in the Land Disposition Agreement.

As a result of financial difficulties encountered by Commonwealth Center Limited Partnership, Citicorp Real Estate, Inc. ("CRE"), the Lender for the Property, assumed ownership of the Property by foreclosure deed recorded with the Registry in Book _____, Page _____. In connection therewith, and as permitted by Section 402 of the Land Disposition Agreement, by deed dated _____ and recorded with the Registry in Book _____, Page _____, CRE conveyed all of its rights, title and interest in the Property to _____, a _____, (the "Interim Holder"). The Interim Holder has agreed to abide by the covenants and restrictions in the Deed from the Authority to Commonwealth Center Limited Partnership, dated _____ and recorded with the Registry in Book _____, Page _____ (the "Deed") and the terms and conditions of the Land Disposition Agreement, subject to the modifications and revisions hereinafter set forth. The Interim Holder is a subsidiary of CRE. CRE holds 73.33 percent and Bank of Nova Scotia holds 26.67 percent of the beneficial interest in the Interim Holder.

On _____, the Authority, at its regularly scheduled meeting, adopted a vote authorizing the Director to execute an amendment to the Land Disposition Agreement between the Authority

and the Interim Holder in connection with the following: (1) releasing the Redeveloper from the obligation to construct the "Project" as originally contemplated in the Land Disposition Agreement; (2) releasing the Redeveloper from the obligation to restore the Paramount Theater, in connection with the Redeveloper entering into the "Paramount Theater Lease"; (3) the use of the Property as temporary parking facilities; and (4) the transfer of ownership of the Property to _____, the Interim Holder. (A Certificate of Vote from the Authority is attached hereto and incorporated herein by reference as Exhibit A.)

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements set forth herein, the Authority and the Interim Holder hereby mutually covenant and agree to amend the Land Disposition Agreement as follows:

ARTICLE I

DEFINITIONS

Section 101: Defined Terms

For the purposes of this Amendment, all terms defined herein, shall have the meanings, respectively, ascribed to them below. All capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Land Disposition Agreement.

The definitions contained in the Land Disposition Agreement for the following terms are deleted in their entirety and the respective definitions below are inserted in their stead:

(c) "Redeveloper" shall mean the entity which acquires title to the Property pursuant to CRE's and/or the Interim Holder's exercise of the rights under Section 403 of this Agreement, and shall include any successor in interest or assign, whether by act of a party to this agreement, as amended, or by operation of law or otherwise, but shall not mean mortgagees, holders of building loan agreements, or any partner, trustee, beneficiary, or stockholder of any entity of which now or hereafter becomes a successor in interest or assign of such entity, whether by act of a party to this Agreement or by operation of law or otherwise. In the event that CRE, the Interim Holder, or any other mortgagee entitled under this Agreement to do so, elects to complete construction pursuant to subsection (a)(1) of Section 403, the mortgagee so electing shall be deemed to be the "Redeveloper."

(g) "Design Proposal" shall mean the drawings, sketches and plans to be developed by the Redeveloper and submitted to the Authority for its approval, which shall show the general plan, elevations, dimensions and character of the improvements to be erected on the

Property by the Redeveloper, including the type, amount, distribution and area of the various uses of the Project.

(h) "Architect" shall mean the architect for the Project to be chosen by the Redeveloper for architectural services with respect to the improvements to be erected on the Property.

(j) "Preliminary Drawings and Outline Specifications" shall mean site plans, floor plans, elevations and sections, outline specifications, design materials and models which will be developed to show the detailed architectural character of the Project to be erected on the Property and the relationship to the Design Proposal, which shall be submitted to the Authority for its approval.

(m) "Contractor" shall mean the contractor or contractors, to be chosen by the Redeveloper for one or more Phases of the Project.

(n) "Project" shall mean the building(s), landscaping and other improvements to be constructed by the Redeveloper pursuant to the Final Working Drawings and Specifications, containing the zoning square feet of improvements as shown therein to be used for the purposes specified therein, to be constructed on the Property, which shall be referred to as a single Project although it is understood and agreed that it, and the plans and specifications therefore, may be developed in Phases.

(t) "BRA Parcel Phase" shall mean the phase that includes the portion of the Project to be constructed on the BRA Parcel.

(u) "Paramount Theater" shall mean the Paramount Theater located at 549-563 Washington Street, Boston, Massachusetts, as more particularly described in the "Paramount Theater Lease."

(v) "Keith Block Parcels" shall mean those parcels of land in Boston Proper, Boston, Massachusetts which were owned by the Commonwealth Center Limited Partnership and/or its affiliates and are generally bounded by Mason Street, Avery Street and Washington Street up to, but not including the Paramount Theater, which are included in the Development Plan, for Planned Development Area 33 approved by the Authority on June 29, 1989, as amended on _____, but which are not included in the Property and are not subject to the provisions of this Agreement.

(w) "Theater Architect" shall mean the architect chosen by the Lessee under the "Paramount Theater Lease" for architectural services with respect to the historic restoration of the Paramount Theater.

The following terms shall have the meanings, respectively, ascribed to them below:

(y) "Paramount Theater Lease" shall mean the lease of the Paramount Theater dated _____, 1991, with _____, as Lessor and _____, as Lessee a notice of which Lease is to be recorded with the Registry.

(z) "Interim Holder" shall mean _____, a _____. The Interim Holder is a _____ of CRE, and shall be deemed to be a holder of a mortgage, pursuant to the second paragraph of Section 402.

ARTICLE II

TRANSFER OF THE BRA PARCEL AND PAYMENT THEREFOR

The following is added at the end of the second paragraph in Section 202:

"The rights of the Redeveloper as set forth in this paragraph with regard to the License and the Licensee may be exercised by either CRE or the Interim Holder."

The following is added at the end of Article II:

"Section 212: Prerequisites to Conveyance and Payments Made

The Authority and the Interim Holder acknowledge and agree that all prerequisites to the conveyance of the BRA Parcel have been fulfilled and that the payments referred to in Section 203, clauses (i) and (ii) have been made in a timely manner. The Authority and the Interim Holder further acknowledge and agree that the payment referred to in Section 203, clause (iii) has been satisfied by the provision to the Authority of a certain letter of credit dated _____, in the amount of \$_____, and drawn on _____."

ARTICLE III

RESTRICTION AND CONTROLS UPON REDEVELOPMENT

Section 301: Redevelopment Pursuant to Plan

In Section 301, Subsection (g), the words "the date of this Agreement" are deleted and the following inserted in their stead:

"the Authority approves the Preliminary Drawings and Outline Specifications"

Section 302: Project to be Constructed in Accordance With Approved Plans

Subsection (a) of Section 302 is deleted in its entirety and the following is inserted in its stead:

"(a) The Property shall be used for the construction and use of a development, to be built in accordance with the Final Working Drawings and Specifications approved by the Authority and with the applicable standards and controls of the Plan."

In Section 302, Subsection (b), the following is deleted:

";provided however that all material Change Orders associated with the renovation of the Paramount Theater shall be subject to approval in writing by the Authority"

In Section 302, Subsection (d), the following is deleted in the three places that it appears in said clause:

"or the Theater Architect"

Section 303: Time for Commencement and Completion of Construction

In Section 303, Subsection (a), in the second line, the following is inserted after the words "may be constructed":

", and the plans therefor may be developed,"

In Section 303, Subsection (a), the last sentence of said Subsection is deleted in its entirety.

In Section 303, Subsection (b), the last two words in the second line and the remainder of the subsection are deleted in their entirety and the following inserted in their stead:

"."

Section 308: Creation and Rehabilitation of Theater Space

This Section 308 is deleted in its entirety.

ARTICLE IV

TRANSFER AND MORTGAGE OF REDEVELOPER'S INTEREST

Section 401: General Terms Relating to Transfer of Interest in Property by Redeveloper

In Section 401, Subsection (a), the first two words and the first comma in the first line thereof are deleted.

In Section 401, Subsection (a), the following modifications are made:

In Clause (i), after the phrase "partner/stockholder" the following is inserted:

"or other holder of any beneficial interest in the Redeveloper or in the Property"

In Clause (vii), the phrase "general partners" is deleted in the three places where it appears, and the following is inserted in the first and the last of such places:

"persons or entities constituting the Controlling Entity"

In Clause (vii), in the second place where the phrase "general partners" was deleted, the following is inserted in its stead:

"such person or entity"

In Clause (vii), the phrase "the other" is deleted and the following inserted in its stead:

"another"

In Clause (viii), after the phrase "Limited Partnership Agreement", the following is inserted:

", declaration of trust, articles of organization and by-laws, or similar organizational documents, as the case may be,"

In Clause (viii), the term "general partners" is deleted and the following is inserted in its stead:

"Controlling Entity"

In Clause (ix), after the phrase "limited partnership interest", the following is inserted:

", or similar beneficial interest that does not by virtue of such interest vest in the holder control over the major decisions as outlined in Clause (viii), above"

In Section 401, Subsection (a), the following is added at the end of the next to last paragraph thereof:

"For purposes of this Subsection (a), the term "Controlling Entity" shall mean the entity or entities, or person or persons, who by the terms of the limited partnership

agreements, declarations of trust, articles of organization and by-laws, or similar organizational documents, as the case may be, of the Redeveloper, controls the major decisions, as such decisions are outlined in clause (viii) above. Reference to the original Controlling Entity, or words of similar import, shall be deemed to refer to the Controlling Entity of the Redeveloper, as of the time the Redeveloper acquires title to the Property pursuant to Section 403, hereof."

In Section 401, Subsection (a), the following is inserted in the third line of the last paragraph thereof after the word "Redeveloper":

" , or other interests in the Controlling Entity of the Redeveloper, "

In Section 401, Subsection (b), in the first paragraph, after the phrase "garage space", the following shall be added:

" , or other space "

In Section 401, Subsection (b), at the end of paragraph (3), the following is added:

"The provisions of this Paragraph (3) shall not apply to rent payments under leases made in the ordinary course of business."

In Section 402, the following is inserted at the end of the second paragraph thereof:

"The Interim Holder shall be deemed to be a holder who obtains title to the Property by foreclosure or action in lieu thereof. Further, transfers of the Property or any interest therein or portion thereof and transfers of any interest in the Interim Holder may be made on one or more occasions among or to CRE, its financial participants, and entities related to CRE or such financial participants, and the resulting transferee shall be deemed to be the Interim Holder and therefore a holder who obtains title to the property or an interest therein or portion thereof by foreclosure or action in lieu thereof. Notice of any such transfers shall be given to the authority, which notice shall include a revised Disclosure of Beneficial Interest in accordance with M.G.L. c. 7 §40J and Article 31A of the Boston Zoning Code."

Section 403: Rights and Duties of Mortgagee Upon Acquisition Prior to Completion

In Section 403, Subsection (c), the words "period of twenty-four months" are deleted and the following is inserted in their stead:

"reasonable period of time"

Section 405: Lease of Paramount Theater to the Boston Cultural Corporation

The text of this Section 405 is deleted in its entirety, and the following is inserted in its stead as Section 405:

"The Authority and the Redeveloper acknowledge and agree that the Paramount Theater Lease, and other agreements executed in connection therewith, satisfy the Redeveloper's obligations with regard to the Paramount Theater hereunder."

ARTICLE V

PROVISIONS RELATING TO OPERATION AND MAINTENANCE

Section 501: Maintenance and Operation of Project

In Section 501, in the last line, after "1989" the following is inserted:

", as amended on _____"

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 907: Approvals and Notices

The address for the Redeveloper is deleted and the following is inserted in its stead:

"Redeveloper:

With a copy to:

John Achatz, Esquire
Brown, Rudnick, Freed & Gesmer
One Financial Center
Boston, MA 02111."

The reference to "Temporary BRA Parcel Lender" and the related address are hereby deleted.

The following is added at the end of Section 907:

"Interim Holder: _____

With a copy to:

John Achatz, Esquire
Brown, Rudnick, Freed & Gesmer
One Financial Center
Boston, MA 02111."

ARTICLE X

ADDITIONAL PROVISIONS

The following provisions are hereby added to the Land Disposition Agreement:

Section 1001: Status of Interim Holder

Until such time as CRE or the Interim Holder exercises one of the options under Section 403, the Interim Holder shall be deemed to be the holder of a mortgage, pursuant to the second paragraph of Section 402.

Section 1002: Release of Redeveloper

The Authority hereby releases the Redeveloper, the Lender, CRE and the Interim Holder from any obligations which are inconsistent with the obligations under the Land Disposition Agreement as amended by this Amendment, including, without limitation, the obligation to restore the Paramount Theater, and the obligation to construct the Project as previously contemplated under the Land Disposition Agreement prior to this Amendment.

Section 1003: Waiver and Acknowledgment of Prior Defaults

The Authority hereby waives any defaults, breaches, or failures to perform of the Redeveloper and of the Lender under the Land Disposition Agreement, which defaults, breaches or failures occurred prior to the date of this Amendment.

Section 1004: Time Periods.

Any time period under the Land Disposition Agreement, or this Amendment, which begin on the date of the Land Disposition Agreement or the date of the recording thereof, the date of the Deed or the recording thereof, or the date of this Amendment shall be deemed to run from the date of the recording of the

Confirmatory Deed. Further, the Authority agrees that it will amend, extend, complete and renew, from time to time as may be necessary, all time periods under the Land Disposition Agreement, as amended, so that the Land Disposition Agreement shall continue in full force and effect and all obligations of the Lender or the Redeveloper or the Interim Holder thereunder shall be deferred for a period of time to allow CRE, or its related designee, to acquire title to the Property by foreclosure or by deed in lieu of foreclosure or otherwise, to market the Property and to provide a reasonable time period for the purchaser acquiring title to the Property to exercise its rights and fulfill its obligations under the Land Disposition Agreement, as amended.

Section 1006: Temporary Parking Use

The Authority acknowledges and agrees that the Property may, from time to time, be used as temporary parking facilities. Given that the demolition and new construction on the Property will not all be performed at the same time, the temporary parking use may involve the use and re-use of different portions of the Property from time to time. All of the existing structures, with the exception of the Paramount Theater, may be demolished by the Interim Holder, or the Redeveloper. As the existing structures are removed, various portions, or all, of such vacant land will be used for temporary parking facilities. No further approval of the Authority under this Agreement shall be necessary for the design, construction or any other aspect of such temporary parking use.

Section 1007: Continuing Effect of Land Disposition Agreement.

The terms and requirements of the Land Disposition Agreement shall remain in effect with the exception of those provisions that have been specifically amended or limited by this Amendment. In the event of a conflict between the provisions of the Land Disposition Agreement and those of this Amendment, those of this Amendment shall prevail and govern. The terms of Section 903 regarding partial invalidity shall apply to the Land Disposition Agreement, as amended.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be signed, sealed and delivered by their respective, duly authorized representatives, as of the date first written above.

Witness:

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Stephen Coyle, Director

CITICORP REAL ESTATE, INC.

Approved as to form:

By: _____

Robert F. McNeil
Chief General Counsel
Boston Redevelopment Authority

By: _____

CULTURAL FACILITIES AGREEMENT
COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss. _____, 1991

Then appeared before me, the above-named _____,
as _____ of _____,
as aforesaid, and acknowledged the foregoing to be _____ free act
and deed in said capacity.

_____, Notary Public

My Commission Expires: _____

CULTURAL FACILITIES AGREEMENT
COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss. _____, 1991

Then appeared before me, the above-named Stephen Coyle, as
Director of the Boston Redevelopment Authority, as aforesaid, and
acknowledged the foregoing to be his free act and deed in said
capacity.

_____, Notary Public

My Commission Expires: _____

SSC/6390/124/ab9

CULTURAL FACILITIES AGREEMENT
FOR COMMONWEALTH CENTER DEVELOPMENT

This Agreement is made between Citicorp Real Estate, Inc. ("CREI") and [NEW ENTITY] ("New Entity") designated by Boston Redevelopment Authority ("BRA") and City of Boston Commissioner of Arts and Humanities ("OAH").

Recitals

Whereas, Commonwealth Center Limited Partnership ("CCLP") was proponent of Commonwealth Center Project ("Project");

Whereas, CCLP purchased Paramount Theatre from Public Facilities Department ("PFD") subject to obligation to restore as set forth in deed ("PFD Deed");

Whereas, CCLP negotiated a plan for restoration of Paramount and long term lease of restored Paramount to an entity to be designated by the City; and final understandings on for the Paramount were set forth in Cultural Facilities Agreement ("Old Agreement") that was never executed;

Whereas, CCLP obtained zoning and other approvals for Project based upon restoration and leasing of Paramount as provided in PFD Deed and Old Agreement;

Whereas, CCLP financed acquisition of Project site, including Paramount, with mortgage loan from CREI;

Whereas, CCLP did not restore Paramount as provided in PFD Deed;

Whereas, CCLP defaulted on mortgage loan from CREI;

Whereas, CREI has commenced foreclosure on Project;

Whereas, in light of current economic situation for Boston real estate, parties do not foresee restoration of Paramount pursuant to the plan set forth in the PFD Deed and Old Agreement;

Whereas, the parties desire to arrange for the restoration and use of the Paramount in the near future;

Whereas, CREI desires to modify permits and approvals for Project to remove economic impediments for future developer; and

Whereas, the parties desire to formulate practical plan for dealing with Paramount and avoiding uncertainties of waiting for future development of Project;

Now, therefore, for valuable consideration received, the parties agree as follows:

1. Lease. Upon satisfaction of the conditions set forth below, CREI will lease the Paramount to public entity designated by the BRA and OAH (the "New Entity") for a term of 99 years, at nominal rent, and upon the further terms and conditions set forth in the draft lease (the "Lease") attached to this Agreement as Exhibit A.

2. Conditions to be satisfied. The obligation of CREI to execute and deliver the Lease is conditioned entirely upon satisfaction of the following:

- (a) Amendment of the PFD Deed in accordance with this Agreement;
- (b) Amendment of the all zoning permits, approvals and agreements (the "Zoning Approvals") to provide that execution and delivery of the Lease satisfies conclusively all obligations of the developer of the Project as heretofore proposed with respect to cultural facilities and the Paramount Theater, and that the developer may proceed at any time with the Project and without further obligation to restore, construct, own, operate, contribute any cultural facility as part of the Project or as a condition of the Zoning Approvals;
- (c) Amendment of any other permits, approvals and agreements of local, state or federal governments and agencies (the "Government Approvals") to provide that execution and delivery of the Lease satisfies all obligations of the developer of the Project as heretofore proposed with respect to cultural facilities and the Paramount Theater, and that the developer may proceed at any time with the Project and without further obligation to restore, construct, own, operate, contribute any cultural facility as part of the Project or as a condition of the Government Approvals;
- (d) Receipt of all approvals needed to use the Project Site for surface parking as an interim use until construction commences on buildings or other improvements;
- (e) CREI acquiring title to the Paramount through foreclosure or otherwise;

- (f) Agreement that all cultural facilities obligations of future developer of Project under the Zoning Approvals and Government Approvals are satisfied by Lease.

3. Certain Expenses of OAH. In order to defray certain expenses to be incurred by OAH in administering the lease and continuing activities to renovate the Paramount Theater, CREI will pay a total of \$200,000 to OAH in five installments of \$40,000 each; the first installment of \$40,000 shall be paid simultaneously with the execution of the Lease and the four remaining installments shall be paid on the anniversary of the Lease. Payment shall be made to the BRA as fiscal agent for OAH.

4. Parties Bound. This agreement shall inure to the benefit of the parties hereto and their respective successors and assigns. Without limiting the foregoing, CREI may assign this agreement to any subsequent owner of the Project Site and the City may designate any party to be the Tenant under the Lease.

5. Termination. If the conditions stated above are not fulfilled by [June 1, 1991], then either party upon 60 days notice to the other may terminate this agreement.

6. Cooperation. The Parties agree to cooperate in all actions and proceedings necessary to fulfill the conditions set forth in Section 2. Such cooperation shall include public and private support at all hearings and before all government agencies having jurisdiction over the Project. Such cooperation shall also include consultation on all matters of substance arising out of this Agreement and the Lease.

7. Notices. All notices or other communications required or permitted to be given under this Agreement shall be in writing, signed by a duly authorized officer or representative of the CREI or New Entity as the case may be, and shall either be hand-delivered, delivered by recognized overnight delivery service to the principal office of the party to whom it is directed as noted below or mailed postage pre-paid, by certified mail, return receipt requested to such office as set forth below and shall be deemed given when delivered or on the date shown on the receipt of the delivery service that such delivery was refused during normal business hours:

Citicorp Real Estate, Inc
599 Lexington Avenue, 21st Floor, Zone 12
New York, New York 10043
Attention: James M. Bullock,
Senior Vice President

with a copy to:

John Achatz, Esquire
Brown Rudnick Freed & Gesmer
1 Financial Center
Boston, Massachusetts 02111

Boston _____

Attention: _____

The parties shall promptly notify each other of any change of their respective addresses set forth above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed under seal in their behalf by their respective officers thereunto duly authorized as of this ____ day of March, 1991.

CITICORP REAL ESTATE, INC.

By: _____

NEW ENTITY

By: _____

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Stephen Coyle, Director

CITY OF BOSTON
OFFICE OF ARTS AND HUMANITIES

By: _____

EXHIBIT: LEASE

Achatzj:Citicom:ANO

FIRST REVISED ADEQUACY DETERMINATION
[Interim Project]

COMMONWEALTH CENTER PROJECT
ONE BOYLSTON STREET AND 549-561 WASHINGTON STREET
WARD 3, MIDTOWN DISTRICT 1, PDA-II-D
PLANNED DEVELOPMENT AREA NO. 33

This First Revised Adequacy Determination is issued by the Boston Redevelopment Authority (the "BRA") as of this ____ day of July, 1991, pursuant to Section 31-5 of the Boston Zoning Code (the "Code") and all other applicable authority.

Preliminary Statement

WHEREAS, on January 16, 1990 a Final Project Impact Report (the "FPIR") was submitted for a project known as Commonwealth Center, a proposed two-phase development located in the Midtown Cultural District, which development is planned to contain approximately 1.7 million gross square feet including office, hotel, retail, cultural, daycare and parking uses (the "Project");

WHEREAS, on June 29, 1989 the BRA adopted comprehensive resolutions approving the Project and approving the issuance of an Adequacy Determination pursuant to Section 31-5 of the Code for the Project;

WHEREAS, on July 27, 1989, the Boston Zoning Commission adopted Map Amendment No. 228 designating Planned Development Area No. 33, and the Mayor approved such designation on August 17, 1989;

WHEREAS, in connection with the Project, Permit Application No. 1172 and related plans and Permit Application No. 1173 and related plans were filed with the ISD Commissioner;

WHEREAS, the appeals from the refusals of these permit applications were filed with the Board of Appeal and are set forth in the papers in files No. BZC-13670 and BZC-13671, respectively;

WHEREAS, the Board of Appeal sustained these appeals and granted the petitions in its decisions dated February 6, 1990, which decisions were entered with the ISD on February 14, 1990;

WHEREAS, the BRA issued an Adequacy Determination dated as of _____, 1990 for the Project (the "Prior Adequacy Determination");

WHEREAS, in connection with an interim use of the Project a Revised Final Project Impact Report (the "First Revised FPIR") was submitted to the BRA on _____, 1991;

WHEREAS, the construction of the Project has not commenced and will not commence for a period of time;

WHEREAS, the removal of the existing structures on the Project site and the new construction on the Project site will not all be performed at the same time;

WHEREAS, the temporary use proposed will involve all, or various portions of the Project site, from time to time, as temporary parking, as a temporary part of the Project, as more particularly described on the plans and information submitted with the First Revised FPIR, which temporary parking is hereafter referred to as the "Interim Project";

WHEREAS, the Interim Project is a temporary use and is not changing the scope, dimensions, use or design of the Project, nor making any change to the development review components set forth in Article 31, as such components were approved in the Prior Adequacy Determination for the Project pursuant to Section 31-5 of the Code, nor to any of the design and environmental impact elements set forth in Section 38-16 of the Code, as such elements were approved in the PDA/DIP Plan; and

WHEREAS, on July 18, 1991, the BRA adopted comprehensive resolutions approving the Interim Project and finding that it is consistent with the Project's previously approved Development Plan and with the Prior Adequacy Determination and authorizing its Director to issue a Second Revised Adequacy Determination for the Project.

D E T E R M I N A T I O N

NOW, THEREFORE, the BRA has determined that the First Revised FPIR is adequate to satisfy the requirements of Article 31 of the Code, given the Prior Adequacy Determination, the nature of the modifications proposed and the approval of the transportation department referenced above. Therefore, the BRA, acting by and through its duly authorized director, is issuing this First Revised Adequacy Determination, which together with the Second Revised Adequacy Determination and the Prior Adequacy Determination, constitute the Adequacy Determination for the Project.

IN WITNESS WHEREOF, the Boston Redevelopment Authority has caused this instrument to be signed, sealed and delivered by its director, as of the date first written above.

BOSTON REDEVELOPMENT AUTHORITY

Witness _____ By: Stephen Coyle, Director

Approved as to form: _____

SSC:6390/124:AG3

SECOND REVISED ADEQUACY DETERMINATION
[Modifications]

COMMONWEALTH CENTER PROJECT
ONE BOYLSTON STREET AND 549-561 WASHINGTON STREET
WARD 3, MIDTOWN DISTRICT 1, PDA-II-D
PLANNED DEVELOPMENT AREA NO. 33

This Second Revised Adequacy Determination is issued by the Boston Redevelopment Authority (the "BRA") as of this ____ day of July, 1991, pursuant to Section 31-5 of the Boston Zoning Code (the "Code") and all other applicable authority.

Preliminary Statement

WHEREAS, on January 16, 1990 a Final Project Impact Report (the "FPIR") was submitted for a project known as Commonwealth Center, a proposed two-phase development located in the Midtown Cultural District, which development is planned to contain approximately 1.7 million gross square feet including office, hotel, retail, cultural, daycare and parking uses (the "Project");

WHEREAS, on June 29, 1989 the BRA adopted comprehensive resolutions approving the Project and approving the issuance of an Adequacy Determination pursuant to Section 31-5 of the Code for the Project;

WHEREAS, on July 27, 1989, the Boston Zoning Commission adopted Map Amendment No. 228 designating Planned Development Area No. 33, and the Mayor approved such designation on August 17, 1989;

WHEREAS, in connection with the Project, Permit Application No. 1172 and related plans and Permit Application No. 1173 and related plans were filed with the ISD Commissioner;

WHEREAS, the appeals from the refusals of these permit applications were filed with the Board of Appeal and are set forth in the papers in files No. BZC-13670 and BZC-13671, respectively;

WHEREAS, the Board of Appeal sustained these appeals and granted the petitions in its decisions dated February 6, 1990, which decisions were entered with the ISD on February 14, 1990;

WHEREAS, the BRA issued an Adequacy Determination dated as of _____, 1990 for the Project (the "Prior Adequacy Determination");

WHEREAS, in connection with certain modifications to the Project a Revised Final Project Impact Report (the "Second Revised FPIR") was submitted to the BRA on _____, 1991;

WHEREAS, the modifications proposed for the Project are with regard to the location of the parking, the conversion of the Paramount Theater and the configuration of the loading dock behind the Paramount Theater, which modifications are more specifically described on the plans and information submitted with the Second Revised FPIR and in the related documents referenced therein, including a lease of the Paramount Theatre to an entity designated by the city and a revised Cultural Facilities Agreement, which modifications, are collectively hereinafter referred to as the "Modifications";

WHEREAS, except for the relocation of underground parking and the revisions of arrangements with respect to the Paramount Theater, none of the Modifications are changing the scope, dimensions, use or design of the Project, nor, except as stated, making any change to the development review components set forth in Article 31, as such components were approved in the Prior Adequacy Determination pursuant to Section 31-5 of the Code, nor to any of the design and environmental impact elements set forth in Section 38-16 of the Code, as such elements were approved in the PDA/DIP Plan;

WHEREAS, the Modifications pertaining to the transportation component of the Project have been reviewed and approved by the Boston Transportation Department, as evidenced by its letter dated June 27, 1991, a copy of which is attached hereto;

WHEREAS, on July 18, 1991, the BRA adopted comprehensive resolutions approving the Modifications and finding that such Modifications are consistent with the Project's previously approved Development Plan and with the Prior Adequacy Determination and authorizing its Director to issue a Second Revised Adequacy Determination for the Project.

D E T E R M I N A T I O N

NOW, THEREFORE, the BRA has determined that the Second Revised FPIR is adequate to satisfy the requirements of Article 31 of the Code, given the Prior Adequacy Determination, the nature of the modifications proposed and the approval of the transportation department referenced above. Therefore, the BRA, acting by and through its duly authorized director, is issuing this Second Revised Adequacy Determination, which together with the Prior Adequacy Determination and the First Revised Adequacy Determination, constitute the Adequacy Determination for the Project.

IN WITNESS WHEREOF, the Boston Redevelopment Authority has caused this instrument to be signed, sealed and delivered by its director, as of the date first written above.

BOSTON REDEVELOPMENT AUTHORITY

By:

Witness

Stephen Coyle, Director

Approved as to form:

SSC:6390/124:AG1

CERTIFICATION
[Modifications]

COMMONWEALTH CENTER PROJECT
ONE BOYLSTON STREET AND 549-561 WASHINGTON STREET
WARD 3, MIDTOWN DISTRICT 1, PDA-II-D
PLANNED DEVELOPMENT AREA NO. 33

This Certification is made by the Boston Redevelopment Authority (the "BRA") to the Commissioner of Inspectional Services Department ("ISD Commissioner"), as of this ____ day of July, 1991, pursuant to Sections 38-14.6 and 3-1A of the Boston Zoning Code (the "Code") and all other applicable authority.

Preliminary Statement

WHEREAS, on June 29, 1989 the BRA adopted comprehensive resolutions approving a project known as Commonwealth Center, a proposed two-phased development located in the Midtown Cultural District, which development is planned to contain approximately 1.7 million gross square feet including office, hotel, retail, cultural, daycare and parking uses (the "Project");

WHEREAS, the June 29, 1989 BRA resolutions approved a Development Plan and Development Impact Project Plan, dated as of June 15, 1989 (the "PDA/DIP Plan") pursuant to Sections 3A-1, 26A-3, 26B-3, and 38-12 of the Code and the related agreements for the Project;

WHEREAS, the June 29, 1989 BRA resolutions authorized its Director to petition the Boston Zoning Commission for approval of the PDA/DIP Plan, for designation of the Project area, including the property known as One Boylston Street (the "Boylston Street Property") and the property known as 549-561 Washington Street (the "Washington Street Property") (except for the small portion of the Boylston Street Property that lies within 100 feet of Tremont Street) as a Plan Development Area and for approval of a Map Amendment establishing PDA No. 33. The portion of the Boylston Street Property that lies within 100 feet of the easterly side line of Tremont Street (the "Protection Area Land") is within the Boston Common and Public Garden Protection Area designated by Section 38-5 of the Code and not in the PDA II area of the MCD. The Protection Area Land is nevertheless part of the Project area covered by the PDA/DIP Plan;

WHEREAS, on July 27, 1989, the Boston Zoning Commission, acting on such petition, adopted Map Amendment No. 228 designating Planned Development Area No. 33, and the Mayor approved such designation on August 17, 1989;

WHEREAS, in connection with the Project, Permit Application No. 1172 and related plans in connection with the Boylston Street Property, and Permit Application No. 1173 and related plans in connection with the Washington Street Property were filed with the ISD Commissioner;

WHEREAS, the appeals from the refusals of these permit applications were filed with the Board of Appeal and are set forth in the papers in files No. BZC-13670 and BZC-13671, respectively;

WHEREAS, the Board of Appeal sustained these appeals and granted the petitions in its decisions dated February 6, 1990, which decisions were entered with the ISD on February 14, 1990;

WHEREAS, the modifications proposed for the Project are with regard to the location of the parking, the conversion of the Paramount Theater and the configuration of the loading dock behind the Paramount Theater, which modifications are more specifically described on the plans submitted with Permit Application No. 0063, pertaining to the Washington Street Property and Permit Application No. 0062, pertaining to the Boylston Street Property; in the appeals to the Board of Appeal from the refusal of such permit applications, which appeals are set forth in files No. BZC-15213, and No. BZC-15210, respectively; and in the related documents referenced therein, including a lease of the Paramount Theatre to an entity designated by the city and a revised Cultural Facilities Agreement, which modifications, are collectively hereinafter referred to as the "Modifications";

WHEREAS, pursuant to Section 38-14.6 of the Code, if modifications to an approved Development Plan are consistent with the approved Development Plan for such PDA, the BRA may certify such consistency to the ISD Commissioner;

WHEREAS, except for the relocation of underground parking and the revisions of arrangements with respect to the Paramount Theater, none of the Modifications are changing the scope, dimensions, use or design of the Project, nor, except as stated, making any change to the development review components set forth in Article 31, as such components were approved in the Adequacy Determination for the Project pursuant to Section 31-5 of the Code, nor to any of the design and environmental impact elements set forth in Section 38-16 of the Code, as such elements were approved in the PDA/DIP Plan;

WHEREAS, the Modifications pertaining to the transportation elements of the Project have been reviewed and approved by the Boston Transportation Department, as evidenced by its letter dated June 27, 1991, a copy of which is attached hereto;

WHEREAS, on July 18, 1991, the BRA adopted comprehensive resolutions approving the Modifications and finding that such Modifications are consistent with the Project's previously approved Development Plan and authorizing its Director to so certify.

C E R T I F I C A T I O N

NOW THEREFORE, the BRA, acting by and through its duly authorized Director, hereby certifies to the Commissioner of ISD that the Modifications described above and as set forth in the documents identified above are consistent with the approved Development Plan and Development Impact Project Plan, dated as of June 15, 1989, and related agreements for the Commonwealth Center Project.

IN WITNESS WHEREOF, the Boston Redevelopment Authority has caused this Certification to be signed, sealed and delivered by its director, as of the date first written above.

BOSTON REDEVELOPMENT AUTHORITY

By:

Witness

Stephen Coyle, Director

Approved as to form:

SSC:6390/124:AF6

CERTIFICATION
[Interim Project]

COMMONWEALTH CENTER PROJECT
ONE BOYLSTON STREET AND 549-561 WASHINGTON STREET
WARD 3, MIDTOWN DISTRICT 1, PDA-II-D
PLANNED DEVELOPMENT AREA NO. 33

This Certification is made by the Boston Redevelopment Authority (the "BRA") to the Commissioner of Inspectional Services Department ("ISD Commissioner"), as of this ____ day of July, 1991, pursuant to Sections 38-14.6 and 3-1A of the Boston Zoning Code (the "Code") and all other applicable authority.

Preliminary Statement

WHEREAS, on June 29, 1989 the BRA adopted comprehensive resolutions approving a project known as Commonwealth Center, a proposed two-phased development located in the Midtown Cultural District, which development is planned to contain approximately 1.7 million gross square feet including office, hotel, retail, cultural, daycare and parking uses (the "Project");

WHEREAS, the June 29, 1989 BRA resolutions approved a Development Plan and Development Impact Project Plan, dated as of June 15, 1989 (the "PDA/DIP Plan") pursuant to Sections 3A-1, 26A-3, 26B-3, and 38-12 of the Code and the related agreements for the Project;

WHEREAS, the June 29, 1989 BRA resolutions authorized its Director to petition the Boston Zoning Commission for approval of the PDA/DIP Plan, for designation of the Project area, including the property known as One Boylston Street, and also known as 597-603 Washington Street, (the "Boylston Street Property") and the property known as 549-561 Washington Street, and also known as 575-585 Washington Street, (the "Washington Street Property") (except for the small portion of the Boylston Street Property that lies within 100 feet of Tremont Street) as a Plan Development Area and for approval of a Map Amendment establishing PDA No. 33. The portion of the Boylston Street Property that lies within 100 feet of the easterly side line of Tremont Street (the "Protection Area Land") is within the Boston Common and Public Garden Protection Area designated by Section 38-5 of the Code and not in the PDA II area of the MCD. The Protection Area Land is nevertheless part of the Project area covered by the PDA/DIP Plan;

WHEREAS, on July 27, 1989, the Boston Zoning Commission, acting on such petition, adopted Map Amendment No. 228 designating Planned Development Area No. 33, and the Mayor approved such designation on August 17, 1989;

WHEREAS, in connection with the Project, Permit Application No. 1172 and related plans in connection with the Boylston Street Property, and Permit Application No. 1173 and related plans in connection with the Washington Street Property were filed with the ISD Commissioner;

WHEREAS, the appeals from the refusals of these permit applications were filed with the Board of Appeal and are set forth in the papers in files No. BZC-13670 and No. BZC-13671, respectively;

WHEREAS, the Board of Appeal sustained these appeals and granted the petitions in its decisions dated February 6, 1990, which decisions were entered with the ISD on February 14, 1990;

WHEREAS, the construction of the Project has not commenced and will not commence for a period of time;

WHEREAS, the removal of the existing structures on the Project site and the new construction on the Project site will not all be performed at the same time;

WHEREAS, the temporary use proposed will involve all, or various portions of the Project site, from time to time, as temporary parking, as a temporary part of the Project, as more particularly described on the plans submitted with Permit Application No. 03689, pertaining to the Boylston Street Property and Permit Application No. 03690, pertaining to the Washington Street Property and in the appeals to the Board of Appeal from the refusal of such permit applications, which appeals are set forth in files No. BZC-15211 and No. BZC-15212, respectively, which temporary parking is hereafter referred to as the "Interim Project";

WHEREAS, pursuant to Section 38-14.6 of the Code, if modifications to an approved Development Plan are consistent with the approved Development Plan for such PDA, the BRA may certify such consistency to the ISD Commissioner;

WHEREAS, the Interim Project is a temporary use and is not changing the scope, dimensions, use or design of the Project, nor making any change to the development review components set forth in Article 31, as such components were approved in the Adequacy Determination for the Project pursuant to Section 31-5 of the Code, nor to any of the design and environmental impact elements set forth in Section 38-16 of the Code, as such elements were approved in the PDA/DIP Plan; and

WHEREAS, on July 18, 1991, the BRA adopted comprehensive resolutions approving the Interim Project and finding that it is consistent with the Project's previously approved Development Plan and authorizing its Director to so certify.

C E R T I F I C A T I O N

NOW THEREFORE, the BRA, acting by and through its duly authorized Director, hereby certifies to the Commissioner of ISD that the Interim Project described above and as set forth in the documents identified above is consistent with the approved Development Plan and Development Impact Project Plan, dated as of June 15, 1989, and related agreements for the Commonwealth Center Project.

IN WITNESS WHEREOF, the Boston Redevelopment Authority has caused this Certification to be signed, sealed and delivered by its director, as of the date first written above.

BOSTON REDEVELOPMENT AUTHORITY

Witness

By:

Stephen Coyle, Director

Approved as to form:

SSC:6390/124:AF8

On June 15, 1989, the Boston Redevelopment Authority ("BRA") adopted comprehensive regulations governing a certain area known as Commonwealth Center, a proposed two-story development located in the Downtown Cultural District ("DCD"). Commonwealth Center is planned to contain approximately 2.5 million gross square feet including office, retail, hotel, cultural, day care and parking uses. The BRA regulations approved:

- (1) Development Plan And Development Impact Project Plan for a Planned Development Area pursuant to Sections 14A-1, 14A-3, 14B-1, and 14-12 of the Boston Zoning Code;
- (2) Development Impact Project Agreement;

MEMORANDUM

JULY 18, 1991

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: HOMER RUSSELL, ASSISTANT DIRECTOR
FOR URBAN DESIGN
BRIAN DE LOREY, DIRECTOR, MIDTOWN CULTURAL
DISTRICT
MARGARET INGS, COORDINATOR, MIDTOWN
CULTURAL DISTRICT

SUBJECT: COMMONWEALTH CENTER

EXECUTIVE
SUMMARY:

This memorandum requests that the Boston Redevelopment Authority authorize the Director to execute amendments to and certificates regarding certain previous approvals and agreements with respect to the Commonwealth Center Project in the Midtown Cultural District to reflect changes concerning the Paramount Theater, to permit approximately 250 previously-approved underground parking spaces to be located on the portion of the site north of Avery Street instead of south of Avery Street, to modify certain schedules, and to permit an interim surface parking use for the Commonwealth Center site. This memorandum further requests that the Authority recommend Board of Appeal approval of four zoning appeals related to the foregoing.

Introduction

On June 29, 1989, the Boston Redevelopment Authority ("BRA") adopted comprehensive resolutions approving a project known as Commonwealth Center, a proposed two-phase development located in the Midtown Cultural District ("MCD"). Commonwealth Center is planned to contain approximately 1.7 million gross square feet including office, hotel, retail, cultural, day care and parking uses. The BRA resolutions approved:

- (1) Development Plan and Development Impact Project Plan for a Planned Development Area pursuant to Sections 3A-1, 26A-3, 26B-3, and 38-12 of the Boston Zoning Code;
- (2) Development Impact Project Agreement;

- (3) Cooperation Agreement;
- (4) Land Disposition Agreement (for a portion of the site);
- (5) Cultural Facilities Agreement;
- (6) recommendation to the Zoning Board of Appeal for approval of exceptions and conditional use permits pursuant to Articles 3 and 38 of the Boston Zoning Code;
- (7) issuance an Adequacy Determination pursuant to Section 31-5 of the Code.

Subsequently, the Zoning Commission adopted a PDA designation for the Project and the Zoning Board of Appeal granted the requested exceptions and conditional use permits.

In 1990, the original proponent of the Project, Commonwealth Center Limited Partnership ("CCLP"), experienced financial difficulty arising out of the poor state of the real estate market for new first class office, hotel and retail space. The mortgage lender, Citicorp Real Estate, Inc. ("CRE") commenced foreclosure proceedings and acting pursuant to its loan documents has taken certain actions to complete and confirm government permits and approvals for the Project, and to modify the plan for redevelopment of the Paramount Theater.

Except for the relocation of underground parking and the revision of arrangements for the Paramount Theater, CRE does not propose any modification in the scope, dimensions, use or design of the Commonwealth Center Project.

Paramount Theater

The Commonwealth Center site includes the Paramount Theater which was conveyed to the redeveloper by the Public Facilities Department ("PFD"). The terms of the disposition of the Paramount Theater by PFD required that the redeveloper commence restoration of the theater in 1989 and 1990. The terms of the Cultural Facilities Agreement approved by the BRA in 1989 require the redeveloper to restore the Paramount Theater for lease to an entity designated by the City as part of the first phase of the Commonwealth Center development. CCLP did not commence restoration of the theater within the time limitations required by PFD. Commencement of Phase 1 of Commonwealth Center has been deferred until a new developer takes over the Project.

After extended consultation with BRA staff, PFD, the Mayor's Office of Arts and Humanities and other interested parties, CRE proposes to modify the plan for restoration of the Paramount Theater as set forth in a revised Cultural Facilities Agreement ("CFA"). The major purpose of the revised CFA is to put the Paramount Theater into the hands of a public body for protection, restoration and use, and to separate the restoration of the Paramount Theater from the Commonwealth Center Project so that neither the Project nor the Theater is unduly burdened or delayed by the schedule of the other.

The revised CFA provides that following CRE's foreclosure, if CRE is the owner of the site, CRE will lease the Paramount Theater to a City-designated entity for 99 years at nominal rent. The lease will provide that the stagehouse may be substantially extended by the tenant. The lease will also provide that when Commonwealth Center is built, there will be a joint loading facility and a right to build theater support facilities on the mezzanine level of the Project near Mason Street. The lease will provide comprehensive easement arrangements for access, egress and utilities during all stages of construction and operation of the Paramount Theater and the Project.

The revised CFA reflects the results of further engineering study of the Project which found that the structural columns for the proposed office tower to be built above the theater would interfere with optimal use of the theater. Revised plans locate columns so as not to interfere with the use of the Paramount Theater. CRE will make its extensive engineering studies available to the City.

Revision of the plan for the Paramount Theater requires modification of a conditional use permit under the Boston Zoning Code and amendments to the BRA approvals set forth above.

Underground Parking

The previously approved plans for Commonwealth Center provide for a 1,000-car underground parking garage under the proposed buildings on the block bounded by Avery Street, Tremont Street, Boylston Street and Washington Street (the "South Block") and no parking under the office tower planned for the block bounded by Washington Street, Avery Street, Mason Street and West Street (the "North Block"). In order to make both the North Block and the South Block attractive as separate development parcels, the redeveloper proposes to change the Development Plan so that approximately 250 underground parking spaces will be provided on the North Block, with the same number of spaces deleted from the plan for the South Block. The entrance for parking on the North Block will be off Mason Street. An effect of this change is to

reduce vehicular traffic at the garage entrance on Boylston Street.

Relocation of approximately 250 underground parking spaces from the South Block to the North Block requires a conditional use permit and a modification of a conditional use permit under the Boston Zoning Code and amendments to the BRA approvals set forth above.

Surface Parking

The proposed interim surface parking use of the Project site will satisfy a current demand for parking for retail and theatre use in the Midtown District.

The proposed surface parking plan calls for increasing the number of parking spaces from 348 to approximately 500, of which approximately 350 will be on the Parcel 30 block and approximately 150 will be on the Keith Block.

Use of the site for interim surface parking requires a conditional use permit under the Boston Zoning Code and amendments to the BRA approvals set forth above.

Miscellaneous Matters

Several previous approvals and agreements contain time schedules, names of property owners and other details which do not affect the basic development plan, but which are no longer achievable or correct. The proposed amendments will modify schedules and correct items which in the judgment of the Director are necessary or desirable to achieve the substantial elements of the approved Development Plan.

Conclusion

Appropriate votes are as follows:

VOTED: Pursuant to the Boston Zoning Code, the Authority recommends to the Board of Appeal approval of the proposed zoning exceptions and conditional use permits requested in the four petitions designated BZC-15210, BZC-15211, BZC-15212, and BZC-15213 with such changes as the Director of the Authority, in his discretion, shall determine to be necessary or desirable, his taking of any such action to be conclusive evidence of his determination and of the authority granted to him hereunder; which approvals are recommended by the Authority. The Authority hereby authorizes the Director of the Authority to certify to the Board of Appeal that said exceptions

and conditional uses are in conformity with the PDA/DIP Plan and the Midtown Cultural District Plan.

VOTED: That the Authority hereby adopts the following Resolutions entitled "Resolutions of the Boston Redevelopment Authority Regarding Amendments to the Commonwealth Center Development Plan and Development Impact Project Plan and Related Documents", and the Authority specifically adopts the findings incorporated therein, and specifically adopts the Resolves set forth in said Resolutions.

